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MICHAEL RODAK, JR.,

In the Supreme Court of the United States

OCTOBER TERM 1974

No. 74-1271

H & R BLOCK, INC.,
Petitioner,

vs.

HAVENFIELD CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

FREDERICK BEIHL
WILLIAM G. ZIMMERMAN
STEPHEN D. ALIBER
915 Grand
Kansas City, Missouri 64106
Attorneys for Respondent

SHOOK, HARDY & BACON
Of Counsel

R. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-2020

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

QUESTIONS PRESENTED

1. Did the Court of Appeals and the District Court err in applying, pursuant to Missouri law, Restatement (Second), Conflict of Laws principles to the facts of this case in holding that respondent's claim was not barred by the New York Statute of Frauds?

2. Did the Court of Appeals and District Court err in their determination that respondent was entitled, at the completion of a full trial, to a directed verdict on the issue of liability only where petitioner admitted liability, and where all the evidence conclusively established petitioner's liability?

STATEMENT OF THE CASE[1]

Petitioner's Statement of the Case fails to comply with U. S. Sup. Ct. Rule 23(1)(e), 28 U.S.C. which requires statement of "facts material to the questions presented." Petitioner's Statement is incomplete,[2] inaccurate[3] and misleading,[4] and is merely an argument to avoid the decisions

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1. Citations to the Petition for Writ of Certiorari and the Appendix to the Petition, which contains the opinion of the Court of Appeals affirming the judgment entered by the District Court, are in the forms "Pet. ....." and "Pet. App. .....", respectively. Citations to the Appendix filed in the Court of Appeals together with the transcript of the proceedings in the District Court are in the form "App. .....".

2. Petitioner omits the fact that on or about November 23, 1971, petitioner acknowledged respondent as the "finder" in the instant transaction (App. 286-288). Petitioner also omits the fact that sometime in the fall of 1971, Anthony Schwegel, petitioner's director of corporate planning, and Richard Bloch, petitioner's board chairman, discussed respondent's interest in a fee for the services it performed and concluded that respondent was, in fact, entitled to compensation from petitioner (App. 494-496, Pet. App. A5).

3. For example, petitioner states that respondent first contacted it "about a loan for . . . CCSC" (Pet. 5). The correct statement is that respondent contacted petitioner and inquired as to petitioner's interest in *acquisition* within the private postal area (App. 244; Pet. App. A3).

4. For example, petitioner states that respondent did not arrange, attend or perform any services incident to three acquisition meetings held between petitioner and CCSC (Pet. 6). Petitioner fails to set forth the facts that although respondent was qualified and offered to perform such services (App. 149, 290; Pet. App. A5) and petitioner promised to notify respondent when respondent's services were needed (App. 307), respondent was not informed of the resumption of negotiations (App. 284; Pet. App. A5) and petitioner did not permit respondent to perform any additional services (App. 284, 496).

Another example of a misleading statement is petitioner's innuendo that respondent received unfair hourly compensation for the services performed on behalf of petitioner (see footnote No. 4, Pet. 5). Petitioner fails to note that its own expert witness, a member of its board of directors, testified that his partner recovered a quarter of a million dollars as a finder's fee for spending only a few minutes making one telephone call which resulted in an acquisition (App. 573).

of two federal courts and a jury verdict against petitioner. The opinion of the Court of Appeals properly states the facts in this case for the purposes of consideration of this Petition (Pet. App. A2-A5).

REASONS FOR DENYING THE WRIT

Preliminary Statement

Petitioner seeks review of the considered decisions of two federal courts and a jury verdict against petitioner. The questions raised by petitioner are merely a reargument of selected facts, adversely decided against petitioner. They do not present any substantial or important question for review by this Court, nor will the resolution of the questions here presented have any importance beyond the facts and parties here involved.

First, petitioner claims that the Court of Appeals and the District Court did not apply the proper Missouri conflict of laws principles in this case. Missouri has unquestionably adopted the Restatement (Second), Conflict of Laws principles, and these principles were properly applied. Petitioner's argument, to avoid its admitted liability, is simply that the Court of Appeals and the District Court should apply a novel "false conflict" of laws rationale, not as part of the process set forth in the Restatement (Second), but to the exclusion of all other principles and factors. This is not the law of Missouri.

Secondly, petitioner argues, for the first time, that it was denied its Seventh Amendment right to jury trial because a verdict on liability was directed against it. This contention of denial of constitutional right was not

presented for consideration to either the District Court or the Court of Appeals[5] and is raised for the first time in this Petition. Petitioner quarrels with the District Court's determination to direct a verdict in respondent's favor on liability only. The District Court's decision, affirmed by the Court of Appeals, was based upon petitioner's admission of liability and also upon the undisputed facts and evidence adduced at trial. Petitioner is but attempting here to gain a third review of the evidence. It is well-settled law that this Court does not accept cases turning solely on evaluation of the evidence. No compelling or substantial reason is disclosed by the Petition why this Court should review the judgment below.

I. The Decision Below Properly Applied Settled Missouri Choice of Law Rules and Correctly Determined That Respondent's Admitted Claim Was Not Barred by the New York Statute of Frauds.

Petitioner admitted it was liable to respondent (App. 406-408, 416, 496, 510). All the evidence is in accord and there is no contradictory evidence. Petitioner concedes that under relevant law of Ohio or Missouri, respondent's claim is not barred. Yet, petitioner seeks to avoid its admission and the evidence, and negate a jury verdict by shielding itself behind the Statute of Frauds of New York, when petitioner had no relationship with that state.

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5. This constitutional argument was not presented by petitioner in either of its two briefs or in oral argument before the Court of Appeals. Petitioner improperly and out of time mentioned this spurious claim in its motion for rehearing in the Court of Appeals.

A. The Court of Appeals Did Not Decide an Important Missouri Question in Conflict with Applicable Missouri Law.

The decision of the Court of Appeals, affirming the District Court, was that Missouri law required application of Restatement (Second), Conflict of Laws[6] to the effect

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6. Applicable Restatement (Second), Conflicts of Laws provisions are Sections 6, 144, 188, 196.

Section 144, involving whether a contract must be in writing, states:

> "Whether a contract must be in writing, or evidenced by writing, in order to be enforceable is determined by the law selected by application of the rules of Sections 187-188."

Section 188, concerning the rules applicable to contracts in the absence of an effective choice of law by the parties provides, in part:

> "(1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in Section 6.
>
> (2) In the absence of an effective choice of law by the parties (see Section 187), the contacts to be taken into account in applying the principles of Section 6 to determine the law applicable to an issue include:
>
> (a) The place of contracting,
>
> (b) The place of negotiation of the contract,
>
> (c) The place of performance,
>
> (d) The location of the subject matter of the contract, and
>
> (e) The domicile, residence, nationality, place of incorporation and place of business of the parties.
>
> These contacts are to be evaluated according to the relative importance with respect to the particular issue."

Section 6 establishes certain choice of law principles to be advanced by the application of the Restatement (Second):

> "(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
>
> (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(Continued on following page)

that the law of the state which has the most significant Section 188 contacts evaluated in light of Section 6 principles is to be applied. Recent Missouri decisions, briefed for and considered by the Court of Appeals, unquestionably and explicitly have adopted and applied this "most significant relationship" analysis of Restatement (Second), in determining choice of law questions involving contracts as well as torts. *State ex rel. Broglin* v. *Nangle,* 510 S.W.2d 699 (Mo. *en Banc* 1974); *Kennedy* v. *Dixon,* 439 S.W.2d 173 (Mo. *en Banc* 1969); *American Institute of Marketing Systems, Inc.* v. *Brooks,* 469 S.W.2d 932 (Mo. App. 1971); see also *Nelson* v. *Aetna Life Insurance Co.,*

Footnote Continued—

(a) The needs of the interstate and international systems,

(b) The relevant policies of the forum,

(c) The relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) The protection of justified expectations,

(e) The basic policies underlying the particular field of law,

(f) Certainty, predictability and uniformity of result, and

(g) Ease in the determination and application of the law to be applied."

Section 196, concerning contracts for the rendition of services, states:

"The validity of a contract for the rendition of services and rights created thereby are determined, in the absence of an effective choice of law by the parties, by the local law of the state where the contract requires that the services, or a major portion of the services, be rendered, unless, with respect to the particular issues some other state has a more significant relationship under the principles stated in Section 6 to the transaction or the parties, in which event the local law of the other state will be applied."

The comment regarding the scope of Section 196 explicitly provides that its provisions will be applied to contracts with brokers or commission agents.

359 F.Supp. 271 (W.D.Mo. 1973). Petitioner contends that resolution of the instant choice of law questions should have been made solely under a "false conflicts" rationale by determination of "which of the states involved in the transaction has a legitimate governmental interest in havings its laws applied to the transaction" (Pet. 13). Petitioner's novel approach to resolving the choice of law issue herein is unsupported by—indeed, contrary to—Missouri case law. In attempting to support its incorrect interpretation of Missouri law, petitioner seizes upon and isolates out of context certain language contained in *State ex rel. Broglin* v. *Nangle, supra.* However, the court in *Broglin* held:

> ". . . the Restatement, Second, Conflict of Laws . . . is clear in pointing to the decision we have reached today." 510 S.W.2d at 704.

Petitioner ignores numerous other explicit statements contained in that case establishing that it was decided in accordance with the directives of Restatement (Second). *State ex rel. Broglin* v. *Nangle,* 510 S.W.2d at 700, 701, 702 and 704.

Under Restatement (Second), Missouri courts first identify contacts relevant to the particular issue and then take these contacts into account in applying the principles embodied in Section 6 in order to determine the state with the most significant relationship to the parties and transaction. As stated by the Missouri Supreme Court:

> ". . . we do not engage in the mere counting of contacts but must evaluate them in order to determine what state has the most significant contacts." *Kennedy* v. *Dixon,* 439 S.W.2d 173, 184 (Mo. *en Banc* 1969).

The Court of Appeals correctly affirmed the District Court's application of Missouri choice of law rules and the determination that:

> (a) a definite grouping of factual contacts with the appropriate states could be made in this case, and
>
> (b) when the contacts were accorded significance in view of Section 6 principles [particularly Sections 6(2)(b)-(d)] Missouri, or Ohio, was the state with the most significant relationship to the parties and the transaction.

The Court of Appeals' opinion did not conflict with any important Missouri law, and thus, there is no basis upon which to grant certiorari. This Court has stated that, except in exceptional circumstances, it will not question or review "the considered determinations of state law by the intermediate federal appellate courts." *Huddleston* v. *Dwyer*, 332 U.S. 232, 237 (1944); *Palmer* v. *Hoffman*, 318 U.S. 109 (1943), *reh. den.* 318 U.S. 800.

B. The Decision Below Correctly Determined, After Following Proper Choice of Law Rules, That Respondent's Claim Was Not Barred by the New York Statute of Frauds.

Notwithstanding that the Court of Appeals and the District Court were required to and did follow the Restatement (Second), petitioner contends that New York has a greater interest in having its law applied and, therefore, the instant choice of law determination should have been made in view of certain selected New York and California cases wherein competing governmental policies were "weighed". Such selective reliance is misplaced because each of the cases cited by petitioner involved sub-

stantial activity and contact with New York. Prior to weighing competing governmental interests, the courts in these cases first determined that there were substantial and sufficient contacts with New York. Only after such determination was made did the courts consider whether New York had a greater interest in having its law applied.

In *Intercontinental Planning, Ltd.* v. *Daystrom, Inc.*, 248 N.E.2d 576 (N.Y. 1969), the court, prior to finding New York law applicable, determined that the two original principals to the transaction were introduced in a meeting in New York, other meetings were held between the parties in New York and crucial services were performed in that state. The court necessarily found that "sufficient contacts" existed within New York in order to justify the further inquiry as to whether New York had a legitimate governmental interest more critically involved in the case than that of other interested states. Accordingly, the court stated:

> "It is clear that the instant dispute *had sufficient contacts with New York* to give our state a substantial interest in applying this policy." (Emphasis added). 248 N.E.2d at 583.

Likewise, the court in *Denny* v. *American Tobacco Co.*, 308 F.Supp. 219 (N.D.Cal. 1970), also recognized that there must be an initial finding of "substantial contacts":

> "California . . . in contract actions such as this, *asks first whether the alleged agreement had 'substantial contacts'* with more than one state. . ." (Emphasis added). 308 F.Supp. at 221.

Under Missouri law—and even under New York and California law—a grouping of factual contacts in this case

is manifest. The Court of Appeals noted the following Ohio contacts as significant under Section 188:

(1) Respondent, petitioner and CCSC met in Columbus, Ohio on March 24, 1971 (App. 153; Pet. App. A4, A8). The purpose of this meeting was to introduce petitioner and CCSC and afford petitioner the opportunity to present acquisition proposals and initiate negotiations (App. 335-336, 338-341, 406, 480-484; Pet. App. A4).

(2) The identification and initiation of the business opportunity idea occurred in the State of Ohio through the activities of Willis Polite, respondent's employee (Pet. App. A8). Respondent had offices in Ohio (App. 313; Pet. App. A4, A8).

(3) The actual physical arrangements necessary for the meeting where the principals were introduced were performed within Ohio (App. 251, 710; Pet. App. A8).

(4) A subsequent negotiation meeting was held in Ohio in November of 1971 (App. 154-155; Pet. App. A4).

(5) CCSC, the business opportunity identified and introduced, and the subject matter of the subsequent negotiations was located in Ohio (App. 164; Pet. App. A8).[7]

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7. Petitioner argues that this contact is insignificant because the location of CCSC in Ohio was fortuitous since petitioner could have acquired any corporation located in any state (Pet. 14). However, the resolution of this case is not determined by what petitioner could have done, but rather by what it actually did. Furthermore, petitioner's argument is meaningless within the context of Restatement (Second) because in a contract action the location of the parties, the subject matter of the acquisition and related events are known in advance and constitute the general expectation of the parties. See Section 188, comment 1b, Restatement (Second). As stated by the Court of Appeals herein:

> "When actions are taken in a particular state, there are, or should be, expectations that the laws of that state may apply to those actions. The fact that [petitioner] could have acquired a company in another state does nothing to diminish the contacts in Ohio." (Pet. App. A8-A9).

The Missouri contacts are that petitioner is a Missouri corporation with its principal place of business there (App. 149), respondent went into Missouri to present petitioner with the opportunity to acquire CCSC (Pet. App. A9), certain negotiation meetings were conducted in Missouri (App. 154-155, 164) and the acquisition was consummated in Missouri (App. 154-155, 164; Pet. App. A5). Petitioner's ultimate liability to respondent arose when the acquisition was consummated in Missouri.

The only New York contacts are that it is respondent's domicile and Griffin made his initial telephone calls to petitioner, in Missouri, from there.

Having determined the contacts presented by the evidence in this case, the Court of Appeals, following the approach mandated by *State ex rel. Broglin* v. *Nangle, supra,* and *Kennedy* v. *Dixon, supra,* proceeded to evaluate the relative importance of the contacts with respect to the issues and in view of Section 6 principles. One of the most important Section 6 principles relating to contracts is "protection of [the] justified expectations" of the parties. Restatement (Second), Conflict of Laws, Section 6(2)(d). Indeed, protection of justified expectations of the parties is the basic policy of the law of contracts. Restatement (Second), Conflict of Laws, Section 188, comment 1(b), and Section 6, comment 2(g). Applying that principle to the situation presented here, the Court of Appeals determined that respondent went into Missouri to present and pursue the transaction and therefore the parties would reasonably expect Missouri law to apply in this case (Pet. App. A9). Since no activities took place in New York, petitioner, a Missouri based corporation, could not reasonably expect (and cannot reasonably ask) that New York law apply.

Petitioner argues that New York has evidenced greater governmental interest by adopting a "finder's fee" statute of frauds. The Court of Appeals properly characterized and then rejected this as an argument that "the state with the strictest or most pervasive law automatically has a greater interest in having its law applied than does a state with a more general or more lenient law" (Pet. App. A8).

Petitioner's contention regarding a lack of governmental interest by Missouri and Ohio is premised solely upon speculation. Neither Missouri nor Ohio has adopted statutes of frauds specifically dealing with finder's fee contracts. This does not compel the conclusion however, that these states lack a governmental interest. Rather, oral and implied contracts for finder's fees are enforceable in Ohio and Missouri. The legislatures of both states have not felt compelled to impose a statutory bar to the enforceability of such contracts.

Petitioner is not disadvantaged by the bringing of this action in Missouri. If this action had been brought in New York, a New York court would have been required to initially find sufficient contacts with New York to justify the application of its law. In view of the contacts in this case, it is apparent that a New York court would not find substantial and sufficient contact to permit application of New York law.

The Missouri Supreme Court has unequivocally determined the law to be applied in conflict of laws cases, and the Court of Appeals' decision did not conflict with that Missouri law. Hence, the Writ of Certiorari should not be granted.

II. The Question of the Correctness of the District Court's Decision to Direct a Verdict for Respondent on Liability Only Involves No Important Question of Federal Law, Has No Importance Beyond the Particular Facts and the Parties Here Involved, but Involves Solely Another Evaluation of the Evidence.

A. Petitioner Improperly Seeks to Raise an Issue Which Was Neither Presented to nor Considered by the Court of Appeals or the District Court.

Petitioner claims denial of right to jury trial as guaranteed by the Seventh Amendment to the Constitution of the United States. The record discloses that petitioner never raised any issue concerning denial of right to jury trial before the District Court or the Court of Appeals.[8] Accordingly, the Court of Appeals did not rule on this contention.

This Court has stated that where issues are neither raised before nor considered by the Court of Appeals, the Supreme Court will not ordinarily consider them. *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144 (1970); *Lawn* v. *United States*, 355 U.S. 339 (1958); *Husty* v. *United States*, 282 U.S. 694 (1931). Accordingly, this Court should decline to consider the issue now raised for the first time by petitioner.

Furthermore, even assuming there is an issue which petitioner could have presented to this Court, the point has not been properly preserved. The failure to raise a constitutional question during the trial, or at the earliest opportunity, in most instances amounts to a waiver thereof. *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130 (1967); *Michael*

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8. See, footnote number 5, *supra*.

v. *Louisiana*, 350 U.S. 91 (1956). Petitioner cannot now complain of alleged errors which were never raised by petitioner and were never considered in the prior judicial proceedings.

B. Petitioner Merely Seeks Another Review of the Evidence.

Petitioner recognizes that the practice of directing verdicts does not offend the Seventh Amendment. *Galloway* v. *United States*, 319 U.S. 372 (1943). Petitioner concedes that under *Galloway*, it is not improper as a violation of the Seventh Amendment to direct a verdict for insufficiency of evidence (Pet. 17). However, petitioner claims that its rights under the Seventh Amendment were abused because its evidence was sufficient to present a jury question on its liability to respondent. Petitioner is merely attempting to obtain another evidentiary review of its contention.

This Court has repeatedly held that it will not grant certiorari "to review the evidence or inferences drawn from it." *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 178 (1938); *United States* v. *Johnston*, 268 U.S. 220, 69 L.Ed. 925 (1925). In addition, this Court has held that the refusal of a trial court to submit certain questions to a jury will not usually provide the basis for the granting of a Writ of Certiorari. *Houston Oil Co.* v. *Goodrich*, 217 U.S. 440 (1918).

The District Court directed a verdict at the close of all evidence, and this decision was specifically approved by the Court of Appeals (Pet. App. A12). In situations such as this where the District Court's consideration of the evidence and inferences drawn therefrom has received the concurrence of the Court of Appeals, this Court has

often stated that it will not ordinarily undertake to review or disturb such concurrent findings of fact. *Berenyi* v. *Emigration Director*, 385 U.S. 630 (1967); *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271 (1949); *Comstock* v. *Group of Institutional Investors*, 335 U.S. 211 (1948).

C. THE COURT OF APPEALS AND THE DISTRICT COURT DID NOT ERR IN HOLDING THAT RESPONDENT WAS ENTITLED, AT THE COMPLETION OF A FULL TRIAL, TO A DIRECTED VERDICT ON THE ISSUE OF LIABILITY ONLY WHERE PETITIONER ADMITTED LIABILITY, AND WHERE ALL THE EVIDENCE CONCLUSIVELY ESTABLISHED PETITIONER'S LIABILITY.

No departure from the accepted and usual course of judicial proceedings is remotely present here. The decisions of the District Court and the Court of Appeals were properly arrived at after consideration of all the evidence in its strongest light in favor of petitioner, and after giving petitioner the advantage of every fair inference justified by the evidence.

After a full trial on the merits, during which the parties were afforded every opportunity to present evidence, the District Court granted a directed verdict for respondent on the issue of liability only, without determining any theory of damages (App. 580-581, 746). Petitioner claims this was error, and argues that there was no direct evidence it had any intention of paying a *customary* fee because respondent had not indicated it expected petitioner to pay a *customary* finder's fee. This argument is relevant to the issue of damages but not to the issue of liability. Petitioner's argument ignores that all of the evidence was to the effect that petitioner was liable to pay respondent a fee. There was no evidence to

the contrary. Whether respondent was entitled to a *reasonable* or *customary* fee was submitted to, and determined by, the jury.

Petitioner argues a factual dispute exists as to whether respondent performed services for the benefit of petitioner or CCSC. It is immaterial whether respondent had dealt with CCSC prior to respondent's establishing its relationship with petitioner. This is not an issue in the instant case. This prior activity is irrelevant to the issues involved here concerning petitioner's obligation to pay respondent for *acquisition services* which respondent performed for and on behalf of petitioner. Respondent was not forever precluded from performing acquisition services on behalf of petitioner merely because respondent previously tried to obtain a loan for CCSC. Petitioner willingly availed itself of services offered by respondent and permitted respondent to act as its representative (App. 115, 481-482).

There is no evidence in the record whatsoever contravening any element necessary to establish petitioner's liability to respondent. The uncontradicted facts and evidence, including petitioner's admissions in its answers to respondent's interrogatories (App. 114), establish that petitioner had no prior knowledge of CCSC until respondent introduced the parties (App. 97); respondent arranged the meeting to introduce the parties (App. 96-97, 100-101, 405-407); respondent's identification of the business opportunity and rendition of services on behalf of petitioner were of value to petitioner (App. 409); petitioner accepted and utilized respondent's services (App. 409); respondent rendered services on behalf of petitioner with an expectation of receiving compensation therefor from petitioner (App. 296, 307-308, 398); because of petitioner's experience with investment bankers, petitioner knew and it reasonably should have known respondent expected to be compensated

by petitioner for the services respondent performed on petitioner's behalf (App. 156, 299-305, 403-407, 416-417, 461-462; P.Ex.Nos. 14-16, 60-63); and significantly, petitioner admitted its obligation to pay respondent a fee for the services respondent performed on its behalf (App. 406-409).

The record is replete with testimony, including that of petitioner's own expert witness, that although there might have been some question as to the amount of compensation owing to respondent, there was no dispute whatsoever that petitioner owed respondent some fee for the services rendered on behalf of petitioner (App. 360-364, 385-388, 416, 435-440, 517-520). Indeed, in a conversation between Anthony Schwegel, petitioner's director of corporate planning, and Richard Bloch, petitioner's board chairman, in the fall of 1971, they concluded that petitioner was obligated to compensate respondent for the services rendered (App. 494-495). Petitioner acknowledged respondent as a finder in November, 1971 (App. 286-288). All expert witnesses at the trial, including petitioner's own expert witness, a member of petitioner's board of directors, testified that respondent was entitled to a fee for the services respondent rendered petitioner (App. 517-520). Furthermore, petitioner's admissions in its answers to respondent's interrogatories establish petitioner's liability to pay respondent a fee (App. 111-114, 408).

Respondent submits that the allegation of a deprivation of a constitutional right was neither timely raised in the lower courts for consideration, nor properly presented for review by this Court. Petitioner desperately attempts to obtain for a third time a reconsideration of the facts, which is not the proper function of a petition for Writ of Certiorari. Even if the facts of the case were to be

reconsidered, they conclusively establish petitioner's liability to respondent, and that the District Court not only properly directed a verdict in respondent's favor on the issue of liability only, but was required to do so, as correctly determined by the Court of Appeals.

CONCLUSION

There is no basis upon which a Writ of Certiorari can properly be granted in this case. The Court of Appeals did not decide an important Missouri question in conflict with applicable Missouri law; rather, it properly applied settled and well-established Missouri choice of law rules and correctly determined that respondent's claim was not barred by the New York Statute of Frauds. The resolution of the questions here presented has no importance beyond the particular facts and parties here involved. It would be unjust, and introduce uncertainty and inconsistency, to allow petitioner to accept and benefit from services performed on its behalf by respondent, to admit its liability to respondent, and then permit petitioner to later repudiate its obligation by reaching out for the law of New York, when petitioner had no justifiable expectation that New York law would apply, and it had no relationship to New York.

Petitioner improperly attempts to suggest that an important question of federal law is here involved, and belatedly and untimely complains of a deprivation of a constitutional right. No important question of federal law is involved. The resolution of the questions here presented has no importance beyond the particular facts and parties here involved. Petitioner simply wants yet another forum in which to argue that the facts did not merit a directed verdict. This argument has been thoroughly considered

and properly rejected by both the Court of Appeals and the District Court.

For all the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

FREDERICK BEIHL
WILLIAM G. ZIMMERMAN
STEPHEN D. ALIBER
915 Grand
Kansas City, Missouri 64106
Attorneys for Respondent

SHOOK, HARDY & BACON
Of Counsel